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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. :	09/851,029	Docket No. :	11032/3039
Inventor :	Frank ADDANTE	Confirmation No. :	2494
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Examiner :	Tri V. NGUYEN	Art Unit :	1796

For : METHOD AND APPARATUS FOR TRANSACTION TRACKING OVER A
COMPUTER NETWORK

Mail Stop **Appeal Brief - Patents**
Commissioner for Patents
P.O. Box 1450
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REPLY BRIEF UNDER 37 C.F.R. §41.41

Sir:

In response to the Examiner's Answer mailed October 18, 2007, Applicants submit this Reply Brief in the above-identified application. Although it is believed that no further fees are due, the Commissioner is authorized to charge any fees or credit any overpayment to the deposit account of Kenyon & Kenyon LLP, Deposit Account No. 11-0600.

I. The Examiner's Answer Fails to Show that Messer Discloses All the Features Recited in Claims 1-77.

Claim 1 recites, in relevant part,

a user node to provide a request to perform a transaction and a request to record the transaction;

a transaction node...to provide a transaction confirmation to the user node, the transaction confirmation including a command to record the transaction; and

a monitor node to receive the request to record the transaction provided by the user node, and to record the transaction in response to the request to record the transaction.

Claim 60 recites similar features. Messer fails to disclose each and every one of these features and, therefore, cannot anticipate the claims.

The differences between the claimed features and Messer's system were explained in the Appeal Brief filed July 2, 2007 and the Response filed March 16, 2006. In response, the Examiner argues that Messer's purchase process is "interactive between the user node and the merchant node," and that "ultimately the information recorded by the Clearinghouse is initiated and thus implicitly requested by the user node." Examiner's Answer, p. 18-19. The Examiner's reliance on an alleged "implicit" request is inappropriate – whether the information recorded by the Clearinghouse results from a process in which the user node was involved is irrelevant, even if the process is initiated by the user node. To anticipate a claim, a reference must disclose each element recited in the claim, at the level of detail as recited in the claim. See M.P.E.P. §2131 and references cited therein. Messer fails to describe a user node that provides a request to record a transaction and, thus, cannot anticipate the claim.

In fact, the Examiner's analysis is inconsistent with the cited art. Messer suggests that it is the *Merchant* server, not the user node, that sends transaction details to the Clearinghouse server:

In Figure 7, a logic flow chart describes the **Merchant server operation**. ... Logic continues to test 950 wherein a purchase decision is tracked. A purchase results in a specific system recording the transaction, block 970, and the **forwarding of the transaction details to the Clearinghouse server**, block 980. If, however, no purchase is made, the system records this on a cookie or similar device deposited with the USER, block 960.

Page 14, line 21 – p. 15, line 4 (emphasis added). The Examiner's analysis ignores the actual claim language, which recites a *user node to provide a request* to record the transaction, and a monitor node to record the transaction *in response to that request*. The fact that Messer's Clearinghouse may record transaction details that arise from a purchase in which the user node was involved fails to suggest that such recording happens *in response to a request* provided by the user node as required by the claims. Neither the Examiner's Answer nor any prior Office

Action identifies where Messer discloses a user node providing a request to record a transaction or a transaction confirmation including a command to record the transaction. This is unsurprising, since Messer never describes a request to record a transaction that is *provided by the user node* as required by the claims. For at least this reason, Messer fails to anticipate claims 1-77.

The Examiner further argues that Messer's description of placing cookies on the user node and tracking the user's behavior by editing and formatting the cookie is equivalent to a transaction confirmation including a command to record the transaction. Examiner's Answer, p. 18. However, even if the Examiner's interpretation of a cookie as a transaction confirmation is accurate, which Applicants do not concede, Messer fails to describe a cookie or any other transaction confirmation that includes *a command to record the transaction*.

Messer only refers to a cookie in five places:

In accordance with the specific aspects of the present invention, the logic associated with the servers incorporate the use of select tagging of information to permit tracking of web site visitors and for tracking and recording the specific transactions under scrutiny. The identifier includes select coded data and may take the form of a "cookie" (or similar tracking device) that is inserted onto the USER'S hard disk memory during access to the promotional link. (Page 5, lines 23-29.)

During the linking process, the USER has an identifier query string appended to the HTTP entry, and possibly a "cookie" placed on their system. These act as a marker to permit tracking of the USER by the Merchant and Clearinghouse, determine if and when the USER was involved in a purchase, and how to allocate the purchase commission to the Site Owner. (Page 8, lines 10-14.)

The USER is confronted with the option of purchasing the product at test 800. If the USER determines not to make the purchase, logic branches to block 810, and the server places a cookie onto the USER. This cookie enables tracking of a later purchase, test 815 and block 817. (Page 14, lines 1-4.)

The Merchant's display screen is presented at block 920. At test 930, the server determines whether the USER arrived with an unexpired cookie or similar device; a positive response branches logic to block 940 and the system stores a "credit" for the last referral site on the cookie or similar device. (Page 14, lines 23-27.)

A purchase results in a specific system recording the transaction, block 970 and the forwarding of the transaction details to the Clearinghouse server, block 980. If, however, no purchase is made, the system records this on a cookie or similar device deposited with the USER, block 960. (Page 15, lines 1-4.)

Although the cookie may include information used for “tracking and recording the specific transactions,” there is no suggestion in Messer that the cookie includes a *command* to record the transaction or otherwise instructs any system to record the transaction.

In fact, Messer’s FIGS. 6A (760), 6B (810, 817), and 7 (970, 980), indicate that the cookie stores *identifiers* of a site, banner, and user node. See p. 13, line 29 – p. 14, line 7, p. 15, lines 1-5. These identifiers can be used to track later customer activities. However, there is no suggestion that the identifiers *command* any server to take any action, or that Messer’s cookie stores any such *command* in addition to the described identifiers. Therefore, the Examiner’s Answer fails to show that the cookies described in Messer are or contain at least a command to record the transaction as recited in the claims. For at least this reason, Messer does not anticipate claims 1-77.

II. The Examiner’s Answer Fails to Show that Messer Discloses All the Features Recited in Claims 78-88.

Claim 78 recites a method comprising:

formatting a cookie **at an ad server**, the cookie including information related to a selection of an advertisement **at a content site**;

storing a cookie at a user node of a user who made the selection; and

providing the cookie from the user node **to the ad server** whenever the user makes a transaction at a sale site associated with the advertisement.

As previously described, Messer does not disclose an ad server or providing a cookie from a user node to the ad server as recited in claim 78. In response to this argument, the Examiner asserts that Messer’s content site “is construed as an ad server” because it “displays the ad banner.” Examiner’s Answer, p. 19. The Examiner further asserts that Messer’s “recording the user’s selection of an ad banner” is equivalent to providing information to an ad server. *Id.*

However, the portion of Messer relied on by the Examiner refers to the Clearinghouse and Merchant servers, *not* the content site that the Examiner has interpreted as an ad server. *See* p. 13, line 24 – p. 14, line 28 (describing operation of the Clearinghouse and Merchant servers in processing transactions). Even if Messer describes editing cookies and recording ad banner selections as suggested by the Examiner, which Applicants do not concede, no such function is performed by the content site, which is the server the Examiner interprets as the recited ad server. Therefore, even applying the Examiner's interpretation, Messer fails to disclose at least providing a cookie *from a user node to an ad server* as required by the claims.

Further, the Examiner's Answer fails to support the assertion that Messer's general user/transaction tracking provides any information, much less a cookie related to a selection of an advertisement at a content site, *to an ad server*. Any tracking performed in Messer's system takes place at the Merchant and Clearinghouse servers. Neither of these servers serve ads. *See, e.g., FIG. 1* (showing Messer's system, which includes only one advertisement displayed by the *content provider*). For at least this reason, neither the Merchant server nor the Clearinghouse server can be considered an ad server as recited in the claims. Any manipulation of cookies that may be performed by these servers cannot anticipate the recited feature of providing a cookie from the user node to the ad server.

III. Conclusion

For at least the reasons presented above, in the Appeal Brief, and in previous Responses, Messer fails to disclose each and every feature recited in the claims. Therefore claims 1-77 and 78-88 are not anticipated, and the rejections should not stand.

Respectfully submitted,

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